IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5468 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PUSHPABEN MANILAL PATEL

Versus

STATE OF GUJARAT

Appearance:

MR AJAY R MEHTA for Petitioners

MS KATHA GAJJAR, AGP for Respondent No. 1

MR MK PUROHIT FOR MR PG DESAI for Respondent No. 2

MR HS MUNSHAW for Respondent No. 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 30/11/2000

ORAL JUDGEMENT

1. The prayers of the petitioner in this petition

are : firstly, for quashing and setting aside the letter of the respondent/Corporation (Annexure-'I' to the petition). The second prayer is for quashing and setting aside the Revised Development Plan for the area in the City of Ahmedabad, comprising in Town Planning Scheme No.29 of the City of Ahmedabad, which includes Final Plot No.283 belonging to the petitioner. The third relief is directing the respondent to release the land bearing Final Plot No.283 of Town Planning Scheme No.29 (Naranpura)- Final from the reservation.

2. Shri AR Mehta, learned counsel for the petitioner, Shri MK Purohit for Shri PG Desai representing respondent no.2, Ms.Katha Gajjar for respondent no.1 and Shri HS Munshaw for respondent no.3 have been heard on this petition.

3. Shri AR Mehta has brought to my notice a Division Bench pronouncement in Special Civil Application Nos.10108/1994, 2716/1998, 4847/1992, 4733/1992, 4427/1992, 4153/1991, 4210/1985, 941/1980, 6461/1996, 6519/1998, 8882/1999, 8885/1999 and 3537/1995, decided on 24-11-2000 and has argued that, on identical facts, reservation of similar nature was held to be illegal, arbitrary and violative of Article-14 of the Constitution of India.

4. Having examined the said pronouncement of the Division Bench and having kept in view the fact that the instant petition also arises on identical facts, detailed discussion and reproduction of facts of the writ petition is not necessary. At page no.42 of the aforesaid judgment of the Division Bench, similar reservation was considered at length, and was held that it is true that the Constitution of India no longer recognizes right to property as a fundamental right under Article-19 of the Constitution but, such indefinite or serious restraint on use of land on the property by the owner on such provision permitting perpetual reservation would suffer from the vice of arbitrariness and irrationality under Article-14 of the Constitution of India. In the above case also, identical reservation of land belonging to the owner/petitioner was under challenge. It was further held in that case that the lands reserved for Bhavnagar University, having not been acquired within ten years from the date of coming into force of the existing Final Development Plan or within six months of the notice period, shall stand released in favour of petitioner for development by them in accordance with law and reservation of the land for Bhavnagar University was declared to have lapsed with all consequential effects

under the Town Planning Act of 1976. Since the same controversy has been resolved by the Division Bench of this Court mentioned above, this petition also has to be allowed and it has to be held that the land of Final Plot No.283 of Town Planning Scheme No.29 (Naranpura) - Final, which has been reserved since long, is liable to be released and the action of reservation of such land is in violation of Article-14 of the Constitution of India.

5. It is now to be seen, which of the reliefs is to be granted to the petitioner. If, Final Plot No.283 of Town Planning Scheme No.29 (Naranpura) - Final is to be

sought in this writ petition need not be granted. Consequently, the writ petition succeeds in part only. The reservation of petitioner's land in Final Plot No.283 of Town Planning Scheme No.29 (Naranpura) - Final is released from reservation, holding that the said reservation is illegal and violative of Article-14 of the Constitution of India. On the facts and circumstances of the case, no order as to costs.

November 30, 2000. [D.C. Srivastava, J.]

/sakkaf